

§ 668.196

§ 668.187(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on three cohort default rates of 25 percent or greater, if your participation rate index is equal to or less than 0.0375 for any of those three cohorts' fiscal years.

(b) *Calculating your participation rate index.* (1) Except as provided in paragraph (b)(2) of this section, your participation rate index for a fiscal year is determined by multiplying your cohort default rate for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to attend your institution during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year, by

(ii) The number of regular students who were enrolled at your institution on at least a half-time basis during any part of the same 12-month period.

(2) If your cohort default rate for a fiscal year is calculated as an average rate under § 668.183(d)(2), you may calculate your participation rate index for that fiscal year using either that average rate or the cohort default rate that would be calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(c) *Deadline for submitting an appeal.* You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(d) *Determination.* (1) You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a participation rate index appeal.

(2) If we determine that your participation rate index for a fiscal year is equal to or less than 0.0375, under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under § 668.187(a)(2) that

would be based on the official cohort default rate for that fiscal year.

(Approved by the Office of Management and Budget under control number 1845-0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.196 Average rates appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if that cohort default rate is calculated as an average rate under § 668.183(d)(2).

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on three cohort default rates of 25 percent or greater, if at least two of those cohort default rates—

(i) Are calculated as average rates under § 668.183(d)(2); and

(ii) Would be less than 25 percent if calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(b) *Deadline for submitting an appeal.*

(1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for an average rates appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your average rates appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.187 if we determine that you meet the requirements for an average rates appeal.

(Approved by the Office of Management and Budget under control number 1845-0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.197 Thirty-or-fewer borrowers appeals.

(a) *Eligibility.* You may appeal a notice of a loss of eligibility under § 668.187 if 30 or fewer borrowers, in total, are included in the 3 most recent cohorts of borrowers used to calculate your cohort default rates.

(b) *Deadline for submitting an appeal.*

(1) Before notifying you of your official cohort default rate, we make an initial

determination about whether you qualify for a thirty-or-fewer borrowers appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your thirty-or-fewer borrowers appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a thirty-or-fewer borrowers appeal.

(Approved by the Office of Management and Budget under control number 1845-0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.198 Relief from the consequences of cohort default rates for special institutions.

(a) *Eligibility.* You are only eligible for relief from the consequences of cohort default rates under this section if you are a—

(1) Historically black college or university as defined in section 322(2) of the HEA;

(2) Tribally controlled community college as defined in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or

(3) Navajo community college under the Navajo Community College Act.

(b) *Applicability of requirements.* We may determine that the loss of eligibility provisions in § 668.187 and the prohibition against full certification in § 668.16(m) do not apply to you for each 1-year period beginning on July 1 of 1999 through 2003, if you meet the requirements in paragraph (a) of this section and you send us—

(1) By July 1 of the first 1-year period that begins after you receive our notice of a loss of eligibility under § 668.187—

(i) A default management plan; and

(ii) A certification that you have engaged an independent third party, as described in this section; and

(2) By July 1 of each subsequent 1-year period—

(i) Evidence that you have implemented your default management plan during the preceding 1-year period;

(ii) Evidence that you have made substantial improvement in the preceding

1-year period in your cohort default rate; and

(iii) A certification that you continue to engage an independent third party, as described in this section.

(c) *Default management plan.* (1) Your default management plan must provide reasonable assurance that you will, no later than July 1, 2004, have a cohort default rate that is less than 25 percent. Measures that you must take to provide this assurance include but are not limited to—

(i) Establishing a default management team by engaging your chief executive officer and relevant senior executive officials and enlisting the support of representatives from offices other than the financial aid office;

(ii) Identifying and allocating the personnel, administrative, and financial resources appropriate to implement the default management plan;

(iii) Defining the roles and responsibilities of the independent third party;

(iv) Defining evaluation methods and establishing a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans;

(v) Establishing annual targets for reductions in your cohort default rate; and

(vi) Establishing a process to ensure the accuracy of your cohort default rate.

(2) We will determine whether your default management plan is acceptable, after considering your history, resources, dollars in default, and targets for default reduction in making this determination.

(3) If we determine that your proposed default management plan is unacceptable, you must consult with us to develop a revised plan and submit the revised plan to us within 30 days after you receive our notice that your proposed plan is unacceptable.

(4) If we determine, based on the evidence you submit under paragraph (b)(2) of this section, that your default management plan is no longer acceptable, you must develop a revised plan in consultation with us and submit the revised plan to us within 60 days after